

REMARKS

Claims 1-31 and 37-46 are pending in the application.

Claims 1-16, 19-31, and 37-46 were previously presented;

Claims 17 and 18 are original.

Claims 32-36 were canceled.

Claim Rejections - 35 U.S.C. § 102(e)

Claims 1-20, 31, and 37-46 have been rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by Andrianjara et al., U.S. Patent Application Publication 2003/0078276 (filed February 13, 2002), for the reasons provided in the previous Office Action. This reference will be referred to as “2003-0078276” in this paper.

In the previous office action, the Examiner alleged that the instantly claimed compounds read on the compounds listed in Table V of 2003-0078276, the instantly claimed processes read on the processes described in Examples 55-61 of 2003-0078276, and the instantly claimed methods read on the methods disclosed in the abstract of 2003-0078276.

The Examiner further alleged that the U.S. priority application number 60/268,757 (“60/268,757”) fails to provide adequate support under 35 U.S.C. § 112 for the claims because the definitions of groups R₄ and R₃ are not consistent with the definitions of these groups in the priority application.

Applicants respectfully traverse this rejection on the grounds that the earliest effective publication date of 2003-0078276 was not before invention by Applicants of the claimed subject matter, and thus a requirement of 35 U.S.C. § 102(e) has not been met.

The portion of 35 U.S.C. 102(e) relevant to the rejection at issue states that [a] person shall be entitled to a patent unless—

“(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States *before invention by the applicant for patent . . .*” (emphasis added).

Applicants have enclosed with this submission a Declaration Under 37 C.F.R. § 1.132 of Invention of Common Subject Matter signed by the inventors and Exhibits A, B, C, and D that accompany the declaration. Applicants believe that the declaration and exhibits set forth facts that evidence Applicants’ inventorship of the instantly claimed subject matter that is disclosed in, and common to, 2003-0078276 and its U.S. priority application number 60/268,821 (“60/268,821”).

Applicants further believe that the instant declaration is being seasonably submitted with the Request for Continued Examination and fee under 37 C.F.R. § 1.17(e) and that this paper and its enclosures meet the reply requirements of 37 C.F.R. § 1.114(c)..

In view of the above amendment and remarks, Applicants believe that Claims 1-20, 31, and 37-46 are patentable under 35 U.S.C. § 102(e) and that the instant rejection is overcome.

Allowable Subject Matter

Claims 21-30 are objected to as allegedly being dependent upon a rejected base claim. Applicants note that Claims 21-30 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicants thank the Examiner for his helpful suggestion. Applicants have not rewritten these claims in the instant paper because they believe that the rejection of the base claim has been overcome by the above remarks. Accordingly, Applicants believe that the basis for this objection has been removed and that Claims 21-30 are allowable in their present form.

Supplemental Information Disclosure Statement

Applicants herein make available to the Patent and Trademark Office a Supplemental Information Disclosure Statement on forms PTO/SB/08A and/or PTO/SB/08B and copies of the art cited thereon except as noted below. The art for which a copy is not provided is cited in the below table in the column labelled "U.S. Patent Application No. (cumulative, copy not provided)." The copies are not provided because they are cumulative to their corresponding publications, which are also cited on form PTO/SB/08A and copies of which are provided. For convenience, the corresponding publications are identified in the table in the column labelled "Corresponding U.S. Patent Application Publication No."

U.S. Patent Application No. (cumulative, copy not provided)	Corresponding U.S. Patent Application Publication No.
10/075,069	2003/0078276
10/075,954	2002/0193377
10/264,764	2003/0144274
10/269,197	2003/0130278
10/384,115	2003/0216402
10/417,073	2003/0220355
10/602,160	2004/0006077

Applicants respectfully request that the Examiner consider carefully the complete text of the cited reference(s) in connection with the examination of the above-identified application in accord with 37 CFR §1.104(a).

It is respectfully requested that all cited reference(s) considered by the Examiner be listed in the "References Cited" portion of any patent issuing from the instant application (MPEP § 1302.12).

Benefit of Priority Under 35 U.S.C. § 119(e)

Applicants have amended the specification to add a cross-reference to the domestic priority application under 35 U.S.C. § 119(e), United States Provisional Patent Application number 60/268,757, filed February 14, 2001. Applicants claim for domestic priority was originally made in the paper titled, "Declaration and Power of Attorney for Patent Application" that was filed with the instant specification on February 14, 2002.

Conclusion

In view of the above remarks, Applicants respectfully request removal of the rejection and objection and reconsideration of Claims 1-31 and 37-46.

The Commissioner is hereby authorized to charge any fees that may be required, or credit any overpayment, to deposit account number 23-0455.

The undersigned would welcome a telephone call from the Examiner to discuss any matters related to this case that the Examiner thinks are amenable to resolution by such discussion.

Respectfully submitted,

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Enc.

Declaration under 37 C.F.R. § 1.132 on 6 pages
Exhibit A (filing receipt on two pages for U.S.S.N. 10/075,654)
Exhibit B (certified copy of U.S.S.N. 60/268,757)
Exhibit C (U.S. 2003-0078276)
Exhibit D (certified copy of U.S.S.N. 60/268,821)
Forms PTO/SB/08A
Copies of non-cumulative cited art